

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7835 of 1993

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and  
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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RAVINDRA M WARDE

Versus

STATE OF GUJARAT

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Appearance:

MR SV PARMAR for Petitioner  
GOVERNMENT PLEADER for Respondent No. 1  
MR DA BAMBHANIA for Respondent No. 2  
SERVED for Respondent No. 4, 5

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CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and  
MR.JUSTICE M.S.SHAH

Date of decision: 08/12/97

ORAL JUDGEMENT (Per Sreedharan CJ.) :

Petitioner claims to be a member of "Mahar" community which is a scheduled caste as per the Presidential Order dated 18-9-1976. He wants the benefit

of reservation for appointment to the post of Unarmed Police Constable. He applied for a certificate to get the benefit of reservation as a member of the Scheduled Caste community. The certificate was denied. Hence he has approached this Court, inter alia, praying for issuance of a writ of mandamus directing the Sub-Regional Employment Officer to include his name for being considered by the selection committee for the post of unarmed police constable.

By virtue of the interim order passed by this Court the petitioner was considered by the selection committee as a member of the Scheduled caste and the result has been kept in sealed cover and the result has not been declared.

A detailed affidavit-in-reply has been filed by P.N.Parmar, Deputy Director of Social Welfare Department Gujarat State. The contention taken therein is that the petitioner does not belong to original Gujarat State and, therefore, he is not to be treated as a member of the Scheduled Caste. The reason for this stand as discernible from the affidavit-in-reply is as follows. The petitioner's grand father died in the year 1945, whereas his father was serving in Anil Textile Mills in the year 1960. When the Presidential Order of 1950 was issued, petitioner was not belonging to Gujarat State and therefore, the petitioner is not entitled to any benefit of the Presidential Order of 1950. In view of the Circular dated 22-2-1985 of the Government of India; the letter dated 15-10-1985 addressed by the Government of India, Circular dated 12-8-1988 of the Government of Gujarat and the letter dated 10-6-1991 of the Social Welfare Department, Government of Gujarat, the petitioner is not entitled to the benefit of Presidential Order of 1950. The petitioner who belonged to another State and migrated to State of Gujarat is not entitled to the benefit available to the Scheduled Castes and Scheduled Tribes of Gujarat State. Certificate issued to the petitioner shows that he belongs to Hindu Mahar community Maharashtra State and Mahar is Scheduled Caste community in Maharashtra State. It is not applicable to the Gujarat State. So the petitioner is not entitled to the benefit of reservation as a member of the Scheduled Caste.

It is common case that the present Gujarat State and the present Maharashtra State were earlier comprised in the State known as Bombay State. The present Maharashtra State and the present Gujarat State were formed pursuant to State re-organisation, with effect

from 1-5-1960. The petitioner and his forefathers were staying in the erstwhile Bombay State. Father of the petitioner was staying in Gujarat and was working in Anil Textile Mills in 1960, before the State reorganization and his family was residing within Bombay State in Surat. When Gujarat State was formed on reorganization of States, Surat came within the territorial limit of Gujarat State. Thus, the petitioner became a domicile of Gujarat State. There was no migration of the petitioner and his family from Maharashtra State to Gujarat State after reorganization. He continued to stay in Surat as he was staying prior to State reorganization. In Gujarat State members of Mahar community are treated as Scheduled Caste. In the Presidential Order dated 20-9-1976, in Item 17 of Part IV- Gujarat, "Mahar, Taral, Dhegu Megu" have been mentioned as Scheduled Caste. So the petitioner whom is a domicile of Gujarat is a member of Mahar community which is a Scheduled Caste community as per the Presidential Notification dated 20-9-1976. The petitioner is therefore, entitled to the benefit of reservation as a member of the Scheduled Caste community of Gujarat. Contrary stand taken by the respondents, to say the least, is perverse.

By virtue of the interim order the petitioner was interviewed for selection to the post of Unarmed Police Constable. The result of the interview is kept in sealed cover. According to the learned Counsel representing the petitioner, the petitioner has come out successfully in the interview. Depending on the result of the interview, which is kept in the sealed cover, the petitioner must be offered employment without any further delay. Final order in this behalf should be passed within two weeks from the date of this judgment.

On account of the hostile attitude taken by the respondents, the petitioner has been kept out of employment for the past three to four years. We, therefore, allow this petition with costs of Rs.3000/-.

Rule is made absolute accordingly. Respondents to pay Rs.3000/- towards costs to the petitioner within four weeks.

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